



BILLING CODE: 4410-13

DEPARTMENT OF JUSTICE

28 CFR Parts 35 and 36

[CRT Docket No. 123; AG Order No. 3327-2012]

RIN 1190-AA69

**Delaying the Compliance Date for Certain Requirements of the Regulations
Implementing Titles II and III of the Americans with Disabilities Act**

AGENCY: Department of Justice, Civil Rights Division.

ACTION: Notice of proposed rulemaking.

SUMMARY: By this rule, the Department of Justice is proposing to extend the date for compliance with certain requirements in the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design that relate to provision of accessible entry and exit for existing swimming pools and spas. Concurrently with the publication of this Notice of Proposed Rulemaking (NPRM), the Department is publishing a final rule that extends the compliance date with respect to existing swimming pools, wading pools, and spas to [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] in order to allow additional time to address misunderstandings among pool owners and operators regarding these ADA requirements. By this rule, the Department seeks public comment on its proposal to extend the compliance date for a longer period of six months, until [INSERT DATE 180 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] in the interest of promoting clear and consistent application of the ADA's requirements to existing facilities.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by mail will be considered timely if they are postmarked on

or before that date. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: You may submit comments, identified by RIN (or Docket No. 123), by any one of the following methods:

- Federal eRulemaking portal: www.regulations.gov. Follow the website instructions for submitting comments. The Regulations.gov Docket ID is.
- Mail: Please submit all written comments to Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.
- Overnight, courier or hand delivery: Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue, N.W., Suite 4039, Washington, D.C. 20005.

Please submit your comments by only one method. Because of the short timeframe for this rulemaking, the Department will not review comments received by means other than those listed above, or that are received after the comment period has closed. While the Department is soliciting comments on the proposed suspension of the applicability of the requirements in the 2010 Standards to swimming pools and spas, we do not with this NPRM seek comments related to the merits of the requirements themselves, which have already been evaluated fully through an earlier, extensive notice and comment process. We will deem any such comments on this NPRM out of scope and will not consider them.

FOR FURTHER INFORMATION CONTACT: Allison Nichol, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307-0663 (voice or TTY).

This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).

SUPPLEMENTARY INFORMATION:

Posting of Public Comments. Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online.

If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled "FOR FURTHER INFORMATION CONTACT."

The reason the Department is requesting electronic comments before Midnight Eastern Time at the end of the day the comment period closes is that the inter-agency Regulations.gov/Federal Docket Management System (FDMS), which receives electronic comments, terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern may want to take this fact into account so that their electronic comments can be received. The constraints imposed by the Regulations.gov/FDMS system do not apply to U.S. postal comments which, as stated above, will be considered as timely filed if they are postmarked before Midnight on the day the comment period closes.

Discussion.

The Department of Justice published its revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010. See 75 FR 56163. The revised ADA rules were the result of a six-year process to update the Department's regulations. As part of this process, the Department sought extensive public comment, issuing an Advance Notice of Proposed Rulemaking (ANPRM) on September 30, 2004, 69 FR 58768, and two Notices of Proposed Rulemaking (NPRM) on June 17, 2008, 73 FR 34466 (title II), and 73 FR 34508 (title III). The Department also held a public hearing on the NPRMs and received more than 4,435 written public comments. On September 15, 2010, the Department published a final rule revising the regulations implementing titles II and III of the ADA. As part of this revision, the Department adopted the 2010 ADA Standards for Accessible Design ("2010 Standards"), which are based in large part on the 2004 ADA Accessibility Guidelines adopted by

the United States Access Board in 2004. See 69 FR 44083 (July 23, 2004). With limited exception, the Department’s revised regulations went into effect on March 15, 2011.

With a compliance deadline of March 15, 2012, the 2010 Standards set minimum scoping and technical requirements for accessible entry and exit for new construction and alteration of swimming pools, wading pools, and spas (collectively, “pools”). In addition, the title III regulation provides that as of March 15, 2012, public accommodations’ barrier removal efforts must comply with the 2010 Standards to the extent readily achievable, including with respect to barriers to accessing pools. 28 CFR 36.304 (d)(2)(iii). The title II regulation provides that the 2010 Standards apply where public entities choose to meet their title II ADA program access obligations by making structural changes to their pools. 28 CFR 35.150(b)(1), (2)(ii).

To help educate pool owners and operators concerning the requirements imposed by the regulations issued by the Department in September 2010, the Civil Rights Division published a technical assistance document entitled “ADA 2010 Revised Requirements: Accessible Pools—Means of Entry and Exit” (the “TA Document”), on January 31, 2012. Both the inquiries received by the Department prior to the TA Document’s publication and the pool owners and operators’ response to the TA Document reveal that there were misunderstandings among a substantial number of pool owners and operators concerning the obligations imposed by the ADA as implemented in the 2010 Final Rule as to their obligations with respect to existing pools and their options with respect to the provision of pool lifts. Some pool owners and operators believed that taking certain steps would always satisfy their obligations when in fact those steps would not necessarily result in compliance with the ADA regulations. Recognizing that pool owners and operators face challenges in correcting their misunderstandings and determining appropriate compliance when faced with what is now an immediate compliance date, the

Department determined that it would be impracticable and contrary to the public interest to retain the existing compliance date. Thus the Department is contemporaneously issuing a Final Rule providing a brief 60-day extension of the March 15, 2012, compliance date.

The Department now requests public comment on a proposal to further extend the compliance dates for the title II program accessibility requirements pursuant to 28 CFR 35.150 and the title III barrier removal obligations pursuant to 28 CFR 36.304 as they relate to accessible means of entry into swimming pools, wading pools, and spas in compliance with the 2010 Standards. The proposed extension would run for a period of 180 days from the compliance date specified in the September 2010 Final Rule, namely March 15, 2012. As discussed above, the extension would provide pool owners and operators additional time to evaluate and comply with their program accessibility and readily achievable barrier removal obligations in compliance with sections 242 and 1009 of the 2010 Standards.

REGULATORY CERTIFICATIONS

Executive Order 12866 - Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review” section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988 - Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132 – Federalism

This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), has reviewed this regulation, and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This rule merely requests comment on a proposal to further extend the compliance dates for the title II program accessibility requirements pursuant to 28 CFR 35.150 and the title III barrier removal obligations pursuant to 28 CFR 36.304 as they relate to accessible means of entry into swimming pools, wading pools, and spas. The extension would provide regulated entities additional time to evaluate and comply with their program accessibility and readily achievable barrier removal obligations.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United

States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that “establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.” Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

Paperwork Reduction Act of 1995

This proposed rule does not contain any information collection requirements that require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq.

March 15, 2012 _____
Date

Eric H. Holder, Jr.
Attorney General

[FR Doc. 2012-6747 Filed 03/15/2012 at 4:45 pm; Publication Date: 03/20/2012]